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6 IN THE UNITED STATES DISTRICT COURT
7
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 TRICIA EDWARDS,
10
11 Plaintiff,
12 v.
13 CROSSCHECK INC.,
14 Defendant.

No. C-11-00187 EDL

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS WITH LEAVE
TO AMEND**

15 Plaintiff Tricia Edwards brought this action against Defendant Crosscheck, Inc. alleging
16 violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq., and the Rosenthal
17 Fair Debt Collection Practices Act, California Civil Code section 1788, et seq., both of which
18 prohibit debt collectors from engaging in abusive, deceptive and unfair practices. Defendant filed a
19 motion to dismiss Plaintiff's claim under the Rosenthal Fair Debt Collection Practices Act, but does
20 not seek to dismiss the federal claim. The Court held a hearing on Defendant's motion on July 12,
21 2011. For the reasons stated at the hearing and in this Order, Defendant's motion to dismiss is
22 granted with leave to amend.

23 **Allegations in the complaint**

24 On July 27, 2010, Plaintiff purchased a car from Larry J. Mitsubishi and was told that the
25 down payment could be paid in installments, as Plaintiff could not make a down payment in full at
26 that time. First Am. Compl. ¶ 6. Plaintiff was told she would receive a call within forty-five days to
27 arrange her monthly payments. Id.

28 On or about September 4, 2010, Plaintiff received a letter dated August 30, 2010, from
Defendant regarding the down payment. First Am. Compl. ¶ 7. The letter stated in bold letters: "It

1 is imperative that you give this matter your utmost attention!!!!” Id. The letter also stated that
2 Defendant Crosscheck “maintains a database of bad check writers.” Id.

3 On or about September 10, 2010, Plaintiff called Defendant, assuming that she would be
4 making down payment arrangements as she had been advised by the car dealer. First Am. Compl. ¶
5 8. Plaintiff was transferred directly to the collection department. Id. Plaintiff was advised that she
6 had committed check fraud and needed to get a lawyer and find out what the law was in regard to
7 check fraud. Id. Plaintiff explained that the car dealer had advised her that the down payment could
8 be made in installments. Id. Defendant advised her that Defendant does not do that and asked her
9 what she did for a living. Id. Defendant’s employee told Plaintiff that she had until September 13,
10 2010 at 5:00 p.m. to come up with the money or he was transferring her case to check investigations.

11 Id. After speaking with Defendant, Plaintiff went to Larry J. Mitsubishi to find out why she had
12 been initially told that the down payment would be taken in installments, if that was not the case.
13 First Am. Compl. ¶ 9. An employee of Larry J. Mitsubishi advised Plaintiff to make a payment to
14 Defendant via Western Union and to come back and see him afterwards. Id. Plaintiff made a \$100
15 payment to Defendant through Western Union. Id. As she was heading back to Larry J. Mitsubishi,
16 Defendant called Plaintiff and advised that it would not accept Plaintiff’s \$100 payment and that
17 Plaintiff should go and get her money back. Id. When Plaintiff arrived back at the car dealer and
18 advised the employee there what had happened, the Larry J. Mitsubishi employee called Defendant
19 himself. Id. Defendant told the employee that the \$100 payment would not be accepted. Id. The
20 Larry J. Mitsubishi employee spoke to Defendant’s customer service department, which said that it
21 would accept the payment. Id. Plaintiff called Western Union and confirmed that Defendant had
22 not sent the money back. Id.

23 On September 14, 2010, Defendant called Plaintiff at work and told her once again that
24 Defendant sent the \$100 back and that she had until 5:00 p.m. to come up with \$1000 and Defendant
25 would work with her on the rest. First Am. Compl. ¶ 10. Defendant called Plaintiff a liar and said
26 that she would learn her lesson. Id. Plaintiff tried to tell Defendant that she was told that the down
27 payment could be made in installments and that she did not intend to write a bad check. Id.
28 Defendant told Plaintiff that she did not need to make her car payment and to send payment to

1 Defendant instead. Id. Plaintiff asked her boss for an advance on her paycheck in an attempt to
 2 raise \$1000 by 5:00 p.m., but she was only able to send \$900 to Defendant. Id. Plaintiff was
 3 advised that this was acceptable, but that she needed to come up with the rest of the money by
 4 September 29, 2010. Id.

5 Plaintiff received two additional letters from Defendant, dated September 14, 2010 and
 6 September 29, 2010. First Am. Compl. ¶ 11. The September 14, 2010 letter stated that Plaintiff
 7 ignored Defendant's first letter, which was not the case since Plaintiff had attempted to make a \$100
 8 payment and had also made a \$900 payment. Id.

9 In the September 29, 2010 letter, Defendant stated that the amount owed was \$2024.00, the
 10 same amount that Defendant was trying to collect in the previous letters. First Am. Compl. ¶ 12.
 11 Defendant did not reduce the balance owed, despite Plaintiff's \$900 payment. Id. The September
 12 29, 2010 letter stated that Plaintiff's claim was at a "critical stage and warrants your prompt
 13 attention." Id.

14 On September 29, 2010, Defendant called Plaintiff again at work and spoke to Plaintiff's
 15 boss. First Am. Compl. ¶ 13. When Plaintiff's boss would not transfer Defendant's call to Plaintiff,
 16 Defendant began calling Plaintiff continuously on her cell phone up until 7:00 p.m. Id.

17 On October 8, 2010, Defendant called Plaintiff's sister and left her a voicemail stating that
 18 Plaintiff had committed fraud and that if she heard from Plaintiff to call them. First Am. Compl. ¶
 19 14. On October 15, 2010, Defendant left a voicemail for Plaintiff informing her that they had
 20 verified her employment, but failed to disclose to Plaintiff the true identity of Defendant, that the
 21 call was from a debt collector, and that any and all information obtained would be used for that
 22 purpose. Id.

23 **Legal Standard**

24 A complaint will survive a motion to dismiss if it contains "sufficient factual matter . . . to
 25 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009)
 26 (citing Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007)). The reviewing court's
 27 "inquiry is limited to the allegations in the complaint, which are accepted as true and construed in
 28 the light most favorable to the plaintiff." Lazy Y Ranch LTD v. Behrens, 546 F.3d 580, 588 (9th

1 Cir. 2008).

2 A court need not, however, accept as true the complaint's "legal conclusions." Iqbal, 129 S.
3 Ct. at 1949. "While legal conclusions can provide the framework of a complaint, they must be
4 supported by factual allegations." Id. at 1950. Thus, a reviewing court may begin "by identifying
5 pleadings that, because they are no more than conclusions, are not entitled to the assumption of
6 truth." Id.

7 Courts must then determine whether the factual allegations in the complaint "plausibly give
8 rise to an entitlement of relief." Id. Though the plausibility inquiry "is not akin to a probability
9 requirement," a complaint will not survive a motion to dismiss if its factual allegations "do not
10 permit the court to infer more than the mere possibility of misconduct" Id. at 1949 (internal
11 quotation marks omitted) & 1950. That is to say, plaintiffs must "nudge[] their claims across the
12 line from conceivable to plausible." Twombly, 550 U.S. at 570.

13 Discussion

14 The Rosenthal Fair Debt Collection Practices Act (RFDCPA) defines "consumer debt" as
15 "money, property, or their equivalent, due or owing or alleged to be due or owing from a natural
16 person by reason of a consumer credit transaction." Cal. Civ. Code § 1788.2(f). A "consumer credit
17 transaction" is defined as "a transaction between a natural person and another person in which
18 property, services or money is acquired on credit by that natural person from such other person
19 primarily for personal, family or household purposes." Cal. Civ. Code § 1788.2(e). A dishonored
20 check is not a "consumer credit transaction," and therefore, the RFDCPA does not apply to
21 dishonored checks. See Abels v. JBC Legal Group, 428 F. Supp. 2d 1023, 1026-27 (N.D. Cal. 2005)
22 (citing Charles v. Lundgren & Associates, 119 F.3d 739 (9th Cir. 1997)). "Implicit in Charles is a
23 holding that a dishonored check would be excluded from the scope of the federal FDCPA by a
24 'credit requirement.' The California FDCPA contains a 'credit requirement,' and thus does not
25 apply to Plaintiffs' dishonored checks." Abels, 428 F. Supp. 2d at 1026.

26 Here, Plaintiff's case involves a dishonored check. Plaintiff states that "she did not set out
27 deliberately to write a bad check." First Am. Compl. ¶ 10. Plaintiff alleges that Defendant told her
28 that it keeps a database of bad check writers, and that Defendant would transfer her case to "check

1 investigations” and that Plaintiff “had committed check fraud.” Id. ¶ 7, 8. Because the basis for
2 Plaintiff’s complaint is a bad check, the RFDCPA does not apply.

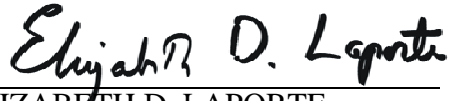
3 Plaintiff’s arguments to the contrary are not persuasive. Plaintiff argues that the RFDCPA
4 applies because the debt at issue is credit extended by a car dealership when the dealership offered
5 to accept payments in installments. See First Am. Compl. ¶ 6 (“On July 27, 2010, Plaintiff
6 purchased a car from Larry J. Mitsubishi and was told that the down payment could be paid in
7 installments, as Plaintiff could not make a down payment in full at that time. Plaintiff was told she
8 would receive a call within forty-five days to arrange her monthly payments.”). However, Plaintiff
9 does not deny that she wrote a check which bounced and that the collection efforts related to a bad
10 check, as alleged in her complaint. Abels rejected a very similar argument:

11 Plaintiffs assert that credit transactions are those transactions in which payment is
12 deferred, and therefore an uncertified check such as the one at issue before the Court
13 is a credit transaction falling within the California FDCPA credit limitation. Although
14 recognizing the creativity of Plaintiffs’ argument, this Court declines to wedge the
15 dishonored checks at issue into Plaintiff’s extrapolation of the meaning of “credit
16 transaction” from the deferral of payment provided in California Commercial Code §
17 3313. The Ninth Circuit has already provided clear guidance on the effect of a “credit
18 transaction” limitation on dishonored checks in Charles. Accordingly, Plaintiffs’
19 claims under the California FDCPA are dismissed.

20 Abels, 428 F. Supp. 2d at 1026-27. Even accepting all allegations in the complaint as true, there is
21 no plausible claim for a consumer credit transaction under the RFDCPA. Thus, Defendant’s motion
22 to dismiss the RFDPKA claim is granted. At the hearing, Plaintiff’s counsel sought leave to amend
23 the complaint, which the Court granted. Plaintiff is reminded, however, that she must have a good
24 faith basis for doing so. Plaintiff may file an amended complaint no later than August 1, 2011.

25 **IT IS SO ORDERED.**

26 Dated: July 12, 2011

27 
28 ELIZABETH D. LAPORTE
United States Magistrate Judge